

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN R. CUTTS,)
)
 Plaintiff,)
)
 v.) No. 4:24-CV-1102-AGF
)
 BERKELEY POLICE DEPARTMENT, et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on two motions filed by self-represented Plaintiff John Cutts: (1) Motion to Modify Relief Sought, ECF No. 9, and (2) Motion for Joinder of Necessary Parties, ECF No. 10. The Court will construe these filings as motions to amend the complaint to revise the relief requested and to add two defendants. These requests will be denied as moot.

Under Federal Rule of Civil Procedure 15(a)(1), “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of the responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). Here, Plaintiff is seeking to amend his complaint within the permissible 21-day period. On September 3, 2024, Defendants filed a Motion to Dismiss. ECF No. 6. Three days later, on September 6, 2024, Plaintiff filed his motions to amend. Thus, Plaintiff may amend his complaint, without seeking leave of the Court.

If Plaintiff wishes to amend his complaint, he must do so within the time provided by Rule 15 of the Federal Rules of Civil Procedure or, if filed outside of the time permitted to do so without leave, he must then file a motion with a proposed amended complaint attached. *See*

Popoalii v. Corr. Med. Servs., 512 F.3d 488, 497 (8th Cir. 2008); *Clayton v. White Hall Sch. Dist.*, 778 F.2d 457, 460 (8th Cir. 1985). The Court recognizes that Plaintiff is representing himself in these proceedings, but even *pro se* plaintiffs are expected to follow the Federal Rules of Civil Procedure. *See Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856-57 (8th Cir. 1996). **Consequently, Plaintiff has until Tuesday, September 24, 2024, to file his amended complaint without seeking permission from the Court.**

The Court warns Plaintiff that an amended complaint replaces the original complaint and failure to name a party or include a claim will result in the dismissal of that party or claim. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005) (parties and claims that are not re-alleged in the newly amended complaint will be deemed abandoned). Because Plaintiff is self-represented, any amended complaint should be filed on a Court-provided form. *See* E.D. Mo. Local Rule 2.06(A) (“All actions brought by self-represented plaintiffs . . . should be filed on Court-provided forms where applicable . . . [T]he Court . . . may order the pro se plaintiff . . . to file the action on a Court-provided form”). If Plaintiff files an amended complaint, he should ensure that the defendants names are spelled correctly and that the claims asserted against each defendant are clearly stated.

Accordingly,

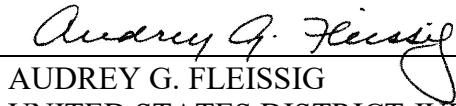
IT IS HEREBY ORDERED that Plaintiff’s Motion to Modify Relief Sought, construed as a motion to amend the complaint, is **DENIED as moot**. ECF No. 9.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Joinder of Necessary Parties, construed as a motion to amend the complaint, is **DENIED as moot**. ECF No. 10.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to Plaintiff a blank “Civil Complaint” form. Plaintiff may request additional forms as needed.

IT IS FURTHER ORDERED that Plaintiff has until **Tuesday, September 24, 2024**, to file his amended complaint without seeking permission from the Court.

Dated this 12th day of September, 2024.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE